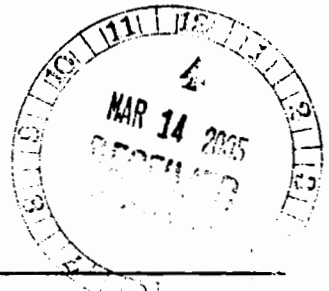


BEFORE THE  
SURFACE TRANSPORTATION BOARD



Docket No. AB-6, Sub-No. 346X & Sub-No. 335X

213563

213539

BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
IN KLINKITAT COUNTY, WA (Sub-No. 346X);  
and,  
BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION –  
BETWEEN KLINKITAT AND GOLDENDALE, WA (Sub-No. 335X);

MOTION TO HOLD IN ABEYANCE THE  
PETITION TO RE-OPEN AB-6 SUB. NOS. 335X & 346X,  
TO DECLARE CERTAIN RIGHT-OF-WAY SEGMENTS *DE JURE* ABANDONED,  
TO DECLARE THE REMAINING RIGHT-OF-WAY SEGMENT *DE FACTO* ABANDONED, AND TO  
REVOKE AUTHORITY FOR TRAIL USE DUE TO LOSS OF FEDERAL JURISDICTION

ENTERED  
Office of Proceedings

MAR 14 2005

Part of  
Public Record

Cecilia Fex  
ACKERSON KAUFFMAN FEX, PC  
1250 H Street, NW, Suite 850  
Washington, DC 20005  
Telephone: (202) 833-8833  
Facsimile: (202) 833-8831  
fex@ackersonlaw.com

*Counsel for Petitioners*

Dated: March 14, 2005

Petitioners Tracy and Lorraine Zoller, William Giersch, David and Kristen Mattson, and Allen Tooke (“Petitioners”) respectfully move the Board hold in abeyance their Petition to reopen STB Docket No. AB-6 (Sub-No. 346X) and AB-6 (Sub-No. 335X), declare the two segments on the Klickitat Branch Line *de jure* abandoned, declare the severed, now-intrastate right-of-way *de facto* abandoned under federal law, and revoke authority for trail-use due to the loss of federal jurisdiction on this line (“Petition to Reopen”).

Petitioners request the Board hold the Petition in abeyance because the parties who oppose Petitioners’ Petition to Reopen have in substantial if not complete part relied on factual allegations that were developed *after* Petitioners filed their Petition on February 7, 2005, and they otherwise submitted evidence that was not available or discernable prior to the February 7, 2005 filing.

These factual allegations include but are not limited to, (1) a February 11, 2005, survey of *private* land on which the opposing parties, the Washington State Parks and Recreation Commission, Rails to Trails Conservancy, and the Klickitat Trail Conservancy (“Trails Group”) rely<sup>1/</sup> (Attachment to Exhibit D to the Trails Group Opposition); (2) a Declaration by Ron Nelson<sup>2/</sup> who does not attest to the absolute accuracy of his statements, but rather states that “further research is necessary for a definitive and binding answer as to who owns what south of Highway 14” (Id.); (3) a newly obtained “Bargain and Sale Deed of Easement” from Greg Colt

---

<sup>1/</sup> The survey is unsigned but Petitioners will assume for the purposes of this Motion that this survey could be replaced by the Trails Group with a signed version. For the purposes of this Motion, therefore, Petitioners do not contest the survey on the basis that it is unsigned.

<sup>2/</sup> The Declaration does not comport with the specific requirements under 49 CFR § 1104.5, but Petitioners will assume for the purposes of this Motion that the Board will nevertheless accept the Nelson Declaration as complete and properly filed.

Land Brokers, dated February 24, 2005, that, according to the Trails Group, purports to reconnect the operating Burlington Northern & Santa Fe Railroad to the severed Klickitat Line (Trails Group, Appendix III to Exhibit B); (4) factual allegations by Richard A. Batie, Manager Network Development for BNSF, with a referenced “Real Estate Print of BNSF” (Batie Verified Statement and attached Exhibit C thereto), not previously available to Petitioners, which depicts an alleged retention of a strip of right-of-way between the operating BNSF line and the Klickitat trail. (See the BNSF Opposition, filed 03/07/05.) This BNSF factual allegation seeks to contradict the County’s assessor map print-out of the subject properties and the additional information upon which Petitioners have relied. (Petition, Trummel Decl., Exhibit C, Attachment 1.) The Batie statements and supporting documents do not, however, include the deeds referenced by that Statement, nor any surveys to support the statement. Moreover, the map upon which the Batie statement relies, reads on the left border as follows: “This map used [sic] by the Burlington Northern and Santa Fe Railway Company in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding the Santa Fe make no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.” (See Ex. C to Batie Statement.)

Because these factual allegations are all new and were unavailable to Petitioners before they filed their Petition, Petitioners have had no opportunity to determine the accuracy or truthfulness of the matters asserted. In addition, and as a separate matter, as to any right-of-way allegedly retained or purchased by the Trails Group to reconnect the operating right-of-way to the severed Klickitat line (collectively, “Connecting Segment”), neither the Trails Group nor BNSF showed or alleged that the alleged Connecting Segment would meet industry standards or federal

guidelines for serving as an actual connection between the operating line and the allegedly “railbanked” line in the event that restoration of the line for railroad use was ever required. Likewise, the opposing parties have not shown the feasibility of making this connection.

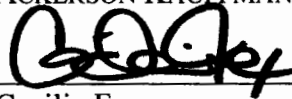
Therefore, Petitioners respectfully submit that holding the Petition in abeyance pending further factual development by the Petitioners is necessary and appropriate in order to allow Petitioners to investigate the accuracy and the practical consequences of the matters asserted and, if they wish to pursue the relief sought in the Petition following their investigation, provide the Board with the most complete and accurate information needed for the Board to make the proper determination.

Granting this Motion would not create undue hardship on the parties, nor on the administrative governance of this pending matter because when weighed against the alternative options – for example the option of withdrawing the Petition and re-filing after investigating these newly developed facts – holding the matter in abeyance will avoid the administration required for closing down and then restarting the matter.

WHEREFORE, Petitioners move this Board to hold the matter in abeyance not to exceed One Hundred and Twenty days, or until no later than July 12, 2005, in order for Petitioners to fully research the accuracy and practical consequences of the facts alleged by the opposing parties.

Respectfully submitted this 14th day of March, 2005,

By: ACKERSON KAUFFMAN FEX, PC

A handwritten signature in black ink, appearing to read 'Cecilia Fex', written over a horizontal line.

Cecilia Fex

ACKERSON KAUFFMAN FEX, PC

1250 H Street, NW, Suite 850

Washington, DC 20005

Office: (202) 833-8833

Fax: (202) 833-8831

[fex@ackersonlaw.com](mailto:fex@ackersonlaw.com)

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Hold in Abeyance the Petition to Re-Open AB-6 Sub. Nos. 335X & 346X, to Declare Certain Right-of-Way Segments De Jure Abandoned, to Declare the Remaining Right-of-Way Segment De Facto Abandoned, and to Revoke Authority for Trail Use Due to Loss of Federal Jurisdiction was served upon the following by U.S. Mail, First Class, postage prepaid this 14th day of March 2005:

Charles H. Montange, Esq.  
426 NW 162nd St  
Seattle, WA 98177  
c.montange@verizon.net

Counsel for Rails to Trails Conservancy

Joseph Shorin, Esq.  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 40100  
Olympia, WA 98504-0100

Counsel for Washington State Parks and  
Recreation Commission

Sarah Whitley Bailiff  
Burlington Northern Santa Fe Corporation  
P.O. Box 961039  
Fort Worth, TX 76131-2828

Sidney L. Strickland, Jr.  
Burlington Northern Santa Fe Corporation  
700 13<sup>th</sup> Street, NW, Suite 220  
Washington, DC 20005-5915

Counsel for Burlington Northern Santa Fe  
Corporation

John E. Lowe  
P.O. Box 3623  
Portland, OR 97208

City of Goldendale  
Legal Department/Planning Department  
P.O. Box 69  
1103 South Columbus  
Goldendale, WA 98620

James M. Brunkenhoefer  
United Transportation Union  
304 Pennsylvania Ave, SE  
Washington, DC 20003-1130

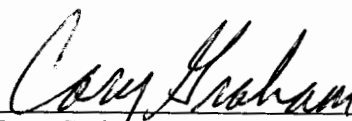
Robert J. Irvin  
Railway Labor Exec. Assn.  
10 G Street, NE, Suite 480  
Washington, DC 20002-4213

Gerald Opatz  
EPA-WD-126  
1200 Sixth Ave.  
Seattle, WA 98101

Shay S. Scott  
One Main Place  
101 SW Main, Suite 1800  
Portland, OR 97204

Robert G. Whitman  
P.O. Box 48343  
Olympic, WA 98902-3307

U.S. National Park Service  
Nat'l Center for Recreation & Conversation  
1849 C Street, NW, Org. Code 2220  
Washington, DC 20240

  
Cary Graham